

A TRIBUTE TO PROFESSOR HOWARD BERMAN†

BARBARA J. COX*

This is the tribute that I prepared for Professor Howard Berman's memorial service. Rather than revise it to focus more on his professional accomplishments, I have decided to leave it substantially as it was when I gave it at the service. Some of the other authors have focused their contributions on his professional life. It is my hope that this tribute will provide a small glimpse of the multifaceted person he was.

I am grateful for the opportunity to talk about Professor Howard Berman. I am also grateful that this service is several months after his death, because I have had some time to think about my friend and colleague and to remember times that we shared, with a little distance from the last terrible days before his death and the sharp pain of losing him.

In planning this service, we thought about what Howard would have wanted. Hence, my jeans, button-down shirt, and soft-soled shoes (which were his favorite clothes). A time for friends and colleagues to get together to talk about a person we miss and to share stories about him. A reception where Starbucks coffee and Extraordinary Desserts are served (because he loved both).

He would want me to start by thanking the people who were particularly kind and understanding about the battle he fought for the last eighteen months of his life. In particular, he would want to thank Dean Steve Smith and Associate Dean Bill Lynch for giving him a leave of absence during his surgery and radiation treatment and being extremely flexible in helping him schedule his work around the demands of his illness; Professor Katharine Rosenberry for agreeing to teach his scheduled Property II class in exchange for her Property I class so that he would not have to prepare a new course during what ended up to be his last teaching semester; and Professor Phil Manns for helping him prepare the legal documents that would assist Cheryl Weckler, his partner of 18 years, and ensure that she would be able to protect his dignity and choices about how he wanted to die.

He would also want to thank Chief Financial Officer Lenore Fraga for the countless hours spent resolving question after question about California Western's disability and insurance policies, and proactively helping to make those policies provide the protections they were intended to provide but that

† The following are tributes from some of Professor Berman's colleagues at California Western School of Law. In addition, see the tributary essay by Professor Roger Clark of Rutgers State University School of Law, beginning on page 379 of this issue.

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are never realized without advocacy from those who best understand them. He would want to thank all of his friends and colleagues from here and around the world, who took the time to help make his last months of life retain the color, the spirit, and the humor that were so important to him. He would most strongly want to thank Professor Christine Hickman and Professor John Noyes for all the time they spent with him and for the innumerable small kindnesses they provided that helped make the limitations of his illness easier to bear.

Most importantly, he would want to thank Cheryl for never leaving his side during those dark days and nights when his body betrayed him, for sharing their eighteen years of life together, and for agreeing to move to Southern California, where neither of them was comfortable living, so that he could do the work that was most important to him.

One of his most abiding legacies to us at California Western can be seen by recognizing the diversity present in this institution, a diversity that did not exist before Howard put his considerable talents to work to change this school. When he and I arrived as first-year law professors in 1987, California Western was a much different place: only one person of color on the faculty and a handful of students of color in the student body. We had not yet made the effort to expand the opportunities for people of color to share the career he chose and the education he valued. We had allowed it to retain its class and race-based privilege, not recognizing that effort had to be made to change legal education so that it could be shared by all people. Today, our institution is much-changed with six faculty members of color and a third of the entering class students of color. He, Christine Hickman, and I founded the Minority Affairs Committee, with the strong support of many of our colleagues who agreed to serve on this largest faculty committee, one made up entirely of volunteers. He guided the committee as chair for numerous years, perhaps most importantly when we were young and floundering, using his political savvy and negotiation skills learned from countless years of working to protect the rights of Native Americans and indigenous peoples throughout the world. He helped hire Jonnie Estell, the guiding force in our Minority Affairs Department, and find equally committed individuals in Linda Dews and Carol Rogers to replace her when she left California Western. His gift to all of us is that we have a strong Minority Affairs program; that we have a diverse faculty, staff, and students; and that we remain able as a private institution to fight off the reactionary attacks on affirmative action and diversity that we in California have seen all too often.

Although Howard was not a person who liked sentimentality, I think he would indulge me in sharing a few special memories with you, knowing that the stories would bring some relief to a day that is filled with pain as we feel his loss.

Moving here at the same time in the summer of 1987, Howard and I formed a friendship that was begun by complaining about how bizarre a place San Diego is. As people coming from the Midwest and Northeast, we were uncomfortable with the constant blue skies and temperate climate, along with its strong Republican leanings and lack of interest in the politics of change.

I was in Wisconsin last Thursday, thinking about Howard and enjoying one of those cold, gray days that we spent many times talking about. He and I both loved those days when one's soul could feel the melancholy of life, 2

those days when one cannot go to work but must spend a day walking in the woods, hands deep in one's pockets, clad in jeans and a heavy jacket, feeling life's existentialism and pondering the dark recesses of our psyches. The difficulty of spending fall in San Diego for us was not just missing the changing colors of the trees and plants, for one can find them if you look carefully. The difficulty of spending fall in San Diego is not having dark, gray days in which to brood. He talked often of cloudy, cold days spent by himself or with Cheryl walking the rocky shores or woods and fields of New England.

I spent such a day on Thursday, having driven two and a half hours each direction to meet an old friend in the woods of central Wisconsin for a few hours time of talking and walking. I thought of Howard so many times that day, missing his laugh, his advice, and his friendship.

Friendship with Howard was another special gift that I received from him. He understood that friends are people who share common beliefs, good conversation, and times enjoying each other's company. But he also understood that friends must sometimes disagree, feel anger and hurt with one another, and cause disappointment and distress. Howard and I disagreed about many things, from the small details of life (his dislike for the wholesome movies I love and the crummy fiction I enjoy) to larger clashes on issues that each of us held dearly. Our friendship was not based on superficial agreement and easy comfort but had struggled through hard times of dismay with one another and heated arguments. That was a gift that I think each of us held dearly, for it is rare to find friends with whom one can walk through anger and dismay. We made it through those times because of the respect we felt for each other, the humor that each of us used to help the other quit taking some issue too seriously, and the trust that we would find a way to work through our disagreements.

I have felt his loss so many times this summer and fall. None quite as strong as now when the seasons are changing and the melancholy in my soul yearns for release. I am grateful for the memories I have, knowing that I shared a friendship with a man who changed me for the better. That is his legacy to me, and I will always have that with me.

CHRISTINE B. HICKMAN*

While it seems a lifetime ago, it has been just two years since some of us on the faculty learned of Howard's illness. That year, Howard and I were teaching the same section of first-year students. In those first horrible weeks, while we struggled to come to terms with the enormity of his diagnosis, the student rumor mill was fully operative. Students were understandably concerned, and for once, the student rumors could not have been worse than the

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Determined to maintain his privacy in the earliest days, I answered no questions—but one day, a worried student of both Howard and mine cornered me and said, “I just have to know if there is something wrong with Professor Berman. I just wouldn’t be able to stand that.” The student continued, “I mean, you’re a nice lady and everything, but Professor Berman is brilliant.”

I took no offense. The student was at least right on one count. Howard Berman was undeniably brilliant.

He was well read, well traveled, and well spoken. He could take an amorphous thought, turn it into a theory, and make you feel as though you thought of it yourself. He pushed everyone—students and faculty alike—to their intellectual limits. As we all know, he didn’t suffer fools gladly. He didn’t suffer fools at all. Indeed, there were a few pretty intelligent people around the school he didn’t suffer so well.

But his criticism was never personal or self-serving. Rather, it was based on the principle of ending unfairness, as he saw it. The final proof of this point is in the way he dealt with the utter unfairness of his own fate. For most, a primary reaction to news of a fatal illness is justifiable anger. Yet Howard showed no anger. “Just a random act occurring in the universe,” he said time and time again. Never, ever, “Why did this have to happen to me?”

Not that he wasn’t sad. The sadness he expressed on an almost daily basis at the thought of leaving his wife Cheryl caused him more pain than any tumor ever could. And knowing Cheryl as I now do, it is easy to see why his devotion to her was so complete.

But there is some comfort in knowing that so many of you—far too many to mention—helped to make the last year bearable. We must thank Steve Smith, who in his first months here took kind and decisive steps—giving the faculty its first indication of the moral depth of our new Dean.

Phillip Manns, Linda Dews, and Lenore Fraga, who handled the business issues that arose with a mixture of professionalism and aggressiveness, which served as a reminder of why one always wants to have them on one’s side.

Sandy Murray, Anita Simons, and Richard Fink, who in subtle and time-consuming ways were there to offer help before anyone could even think to ask for it.

And finally, to the students, especially the Property and Human Rights students, who let him know that using his last ounce of strength to teach last spring was, in the end, worth it.

We are so thankful that he came our way.

Because Howard came our way, none of his former students, whether now a corporate counsel or a public defender, will be able to read the newspaper and skip over the articles on slavery in Mauritania, or executions in Nigeria, or landmines in Bosnia. It doesn’t matter that these issues do not touch their field of practice, because from Howard’s human rights course they have gained some universal understanding. They have learned that they are “a piece of the continent; a part of the main.”

Because Howard came our way, never again will the student body of California Western be just a reflection of the San Diego Bar; instead, it will always reflect at the very least the San Diego community in all of its rich

Because Howard came our way, corporations and nations will have to be a little craftier before they place toxic hazards near the indigenous people of Taiwan or seek to curtail the rights of the native peoples he counseled all over the world.

These are striking professional accomplishments to be sure. But it is not why we miss him so.

We miss that deep voice, which sounded like it came from the back of a cave, that greeted us at school in the morning.

We miss the recalcitrant Luddite, who lived without benefit of a microwave oven or answering machine. A scholar whose prose flowed more easily from the point of his pen than from WordPerfect.

We miss the paradox of a guy who wouldn't dream of seeing a truly popular movie yet was a devoted fan of reruns of "In Living Color" and "Sgt. Bilko."

We miss the activist from the 60s who, unlike so many others, did not give up his principles, his blue jeans, or his Wallabies.

We miss the friend who appreciated our humor, shared our meals, and shared our lives.

We miss the man who started out as my coworker and who, in the end, became my brother.

We can never really say goodbye to someone whose spirit is with us in so many ways. Howard brought us intelligence, wisdom, and direction—and we thank him for this. But more than this, as the Negro spiritual says, my friend "brought joy, great joy to my soul."

JOHN E. NOYES*

My friend and colleague, Howard Berman, died on June 18, 1997, just shy of his fifty-second birthday. His untimely death is a loss to the faculty and students at California Western School of Law, where he was a respected teacher and an active member of the School of Law community since joining the faculty in 1987. His passing is also a great loss to the wider international legal community.

Howard Berman labored in the fields of comparative law and international human rights law. His particular expertise concerned group rights of indigenous peoples. This field—the field of group rights in international law—is relatively new, since the human rights system has long been thought to revolve around the relationship between the individual and the state. The problems of indigenous peoples, however, are not new. Their lands and resources are threatened with dispossession. The political and social institutions of indigenous peoples, and their spiritual traditions, are disregarded or suppressed. Howard worked to address these problems conceptually and practically.

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Howard Berman had a deep understanding of the legal, historical, and cultural contexts within which indigenous peoples found themselves. His understanding was not purely intellectual. He knew first-hand about the struggle of indigenous peoples to survive, for he was in many essential ways a part of their community. Howard's teaching and scholarship were linked to issues he knew to be of vital importance to this community. He fought against the harm to indigenous peoples wrought by state instrumentalities and by individuals in positions of power. He fought against ignorance, with teaching and scholarship that was both honest and passionate.

I once asked Howard which of the scores of different indigenous groups he kept up with. He said, "I try to keep up with all of them." I suspect he did keep up with all of them. I admired the fact that Howard continually read and learned. He immersed himself in his field.

I knew Howard Berman as a respected counselor. He was legal advisor to the Six Nations Iroquois Confederacy. Each summer took him to Geneva, Switzerland, and meetings of the U.N. Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. At the sessions in Geneva, the problems of indigenous peoples worldwide were analyzed, and much work was done in an effort to memorialize a meaningful recognition of indigenous rights in the Draft United Nations Declaration on the Rights of Indigenous Peoples.¹ These sessions involved complex negotiations. Howard brought his expertise and his considerable negotiating skills to bear on the work in Geneva, and he was instrumental in developing the Draft United Nations Declaration. He also served as the Chair of the American Society of International Law's Interest Group on the Rights of Indigenous Peoples.

I also knew and admired Howard as a sought-after speaker and well-respected scholar in his field. In the last full academic year before his illness struck—1994-1995—he spoke at conferences and participated in forums in Copenhagen, Geneva, Buffalo, San Francisco, and Washington, D.C. In that same year, he published seven different articles, essays, and book chapters.²

On a personal level: Howard was my friend. I am still not sure how well I really knew him. But I knew him well enough to know that he loved Cheryl, his wife and partner, deeply. I know Howard valued his friendships with faculty members at California Western and with many in the community of indigenous peoples. I miss him greatly. I miss his dry wit and the evident delight he took in the finer pleasures of the world—New York City's cultural offerings, hiking in the woods, good food, good music, and good books. I, along with all who knew Howard and his work, miss his erudition and his many contributions to international human rights.

1. 34 I.L.M. 541 (adopted by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Aug. 26, 1994).

2. These publications are listed in the bibliography that follows this Tribute.